

**REPUBLIC OF MOLDOVA**

**PUBLIC PARTICIPATION**

**Regulatory Development  
and Power Market Operations**

**Moldova Energy Sector Reform  
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# REPUBLIC OF MOLDOVA

## PUBLIC PARTICIPATION

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## **1. BACKGROUND**

Public participation in the activities of government is essentially an alien concept within the republics of the former Soviet Union, including Moldova. With respect to government agencies, public service entities and the services they are expected to provide, the prevailing attitude of the public seems to be one of complacency. In former soviet times, one had no choice but to accept what was given, when it was given and how it was given. Over time this seems to have conditioned people to adopt an attitude of almost total resignation and fatalism. Democracy may have energized people to vote and speak their mind, but it has not evolved yet into any substantial grass roots activism. For example, three fourths of the population of Chisinau, the capital of Moldova, do without heat and hot water eight months of each and every year, a situation the population seems to simply accept.

Introducing Western concepts of public participation into this environment is a daunting task, but one which is particularly critical to the development of an effective energy sector regulator.

## **2. ANRE'S FIRST PUBLIC STEPS**

ANRE has held three official public sessions at which the Administration Council (Council) has considered and ruled upon applications for licenses in the electricity sector. At the strong recommendation of Hagler Bailly, the Agency arranged for public notice by placing an announcement in a newspaper of general circulation, at least within the Capital. As a result, ANRE had substantial press presence, including TV coverage, at the sessions followed by a number of press articles and reports.

General Director Saracuta conducted a good meeting, especially the way he explained the purpose of these first sessions of the Agency and permitted the press and interested government officials to question the applicants regarding their business plans and their expectations under the new corporate structure and the new regulatory environment. Although the hearing was conducted in a rather unique manner, it held the interest of all in attendance and provided significant information to the press while providing the Council with the record it needed to justify its decision. However, as the regulatory process begins to mature and undertakes a full range of its duties and responsibilities, a more structured public participation process needs to be implemented. The following discussion presents the primary steps that need to be adopted, and implemented as a regular operating practice of the Agency.

### **3. THE PRACTICE OF PUBLIC PARTICIPATION**

The concept of public participation encompasses a broad range of activities. The most basic public participation activities relative to public utility regulation are the public's right to notice, attendance and comment on matters pending before the Agency.

#### **3.1 Notice**

Notice involves a mandatory obligation on the part of the Agency to disseminate as broadly as possible information concerning the Agency's agenda. The Agency's agenda includes matters pending before the Agency, matters scheduled for hearing by the Agency and matters scheduled for discussion and decision by the Agency.

Notice of the Agency's agenda should be provided to the public through two mechanisms.

##### **3.1.1 Official Agenda**

The first entails preparation and dissemination of a weekly, bi-weekly or monthly (whichever is appropriate under the circumstances) Official Agenda that by date, name and case number discloses all filings, hearings and decisions that occurred at the Agency during the prior period. The Official Agenda should also contain for the next period a listing by date, time, name and case number of all scheduled hearings and meetings of the Administrative Council.

The Official Agenda should be posted in a conspicuous location readily accessible by the public at the Agency's Office and mailed or faxed to all public media entities (newspapers, radio and TV stations) in Moldova and those government entities and consumer organizations that have an interest in the activities of the Agency. The Official Agenda should be provided to other persons and entities on a subscription basis ( the fee not to exceed the cost of copying and mailing). The Official Agenda should include a telephone number for persons to call for information about any listed matter and to obtain information about changes in the schedule.

Article 12 of the Electric and Gas Acts mandates that the Council must ensure the transparency of its activity through public sessions and advance notice of the agenda. The Official Agenda is one means of satisfying those requirements.

The Council should adopt a policy that all hearings and meetings of the Council must be noticed at least five days before the scheduled date and that the notice must include identification of all cases to be heard, discussed or decided by the Council. The Official Agenda, to the extent it includes this information and is issued at least five days before the hearing or meeting, will

satisfy the public notice requirement of Article 12. If the Council decides to hold a hearing or a meeting that is not listed in the Official Agenda or is scheduled within five days of the issuance of the Official Agenda, a Special Agenda must be issued, in the same manner and to the same extent as the Official Agenda, at least five days in advance and contain the required information.

Article 12 also mandates that the Council must provide notice of the Agenda to “interested parties”. This is a different requirement than the one discussed above regarding notice to the “public”. Requirements regarding notice to interested parties participating in an adjudicatory proceeding pending before the Agency will not be addressed in this Report.

### **3.1.2 Publication**

Distribution of the Official Agenda and the Special Agenda is an effective tool for partially achieving transparency. It forecloses secret or concealed actions by the Agency, a very important component of transparency, but it is not a particularly effective tool for achieving public knowledge of the business being conducted at the Agency. The Agendas will be seen by relatively few persons and dissemination beyond that audience will be a function of the interest and willingness of the mass media to report the information. Some publication will occur but probably not with sufficient regularity and reliability to satisfy the spirit of Article 12’s mandate for public notice.

Notice by publication is intended to provide important information to persons and entities who will be affected by an important matter pending before the Agency. This is the fundamental intent of public notice. However, not all matters pending before the Agency need to be subject to notice by publication. The following matters should be subject to notice by publication:

- a. License Application:
  - 1. The Application;
  - 2. The date, time and location of both the hearing and the Council meeting to consider and decide the application;
- b. Tariff Adjustment Application:
  - 1. The Application;
  - 2. The date, time and location of both the hearing and the Council meeting to consider and decide the application;
- c. Adoption or Amendment of a Regulation:
  - 1. The proposed Regulation or Amendment;
  - 2. The date, time and location of both the hearing and the Council meeting to consider and decide the Regulation;

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d. Agency Complaint Petition and License Enforcement Order:

1. The Petition or Order;
2. The date, time and location of both the hearing and the Council meeting to consider and decide the Petition or Order.

The purpose of notice by publication at the time these cases are commenced is to inform the public that these matters are pending and thereby provide the public an opportunity to prepare for participation or comment in the cases if they choose to do so.

The publication notice of new cases should occur as soon as practicable after their initiation but no later than fifteen or twenty days after filing. The purpose of notice by publication of the hearing and Council hearing/meeting dates for these cases is to provide an opportunity for the affected public to attend such sessions, observe what occurs and submit comments to the Council. Publication of the notice for the hearing and the Council discussion/decision meeting should occur at least ten days in advance.

In order for the notice to appear in the newspaper by those advance dates, the announcement must be provided to the newspapers no later than the last day for printing before the target date for publication of the newspapers. This means that the Agency must know the publication dates of the newspapers and the last day for having a submitted announcement printed in the newspaper.

Notice by publication involves purchasing space for an announcement in newspapers of general circulation within the geographic area that is affected by a particular matter. This insures that complete and accurate information will be available to the public within the area served by the newspaper. Effective notice by publication involves careful preparation of the announcement so that it contains all of the information necessary for the reader to understand what is involved, who it affects and the extent of those affects.

For example, if the notice concerns a tariff adjustment, the current and the proposed tariffs, the unit rate difference, the percentage impact and the effect on typical bills should be stated in a clear and understandable manner. Equally important is the careful selection of the newspapers in which the notice will be published. The newspaper(s) should have a geographic circulation that covers the entire area that will be affected by the subject matter of the announcement.

### **3.2 Attendance**

The second basic right of public participation in the activities of the Agency is attendance at proceedings of the Agency. Article 12 of the Electricity and Gas Acts require “the sessions of the Administrative Council to be public” and “open access to interested parties and the public in the examination of the matters included in the agenda”. This guarantees that the public has a right to be present at proceedings conducted by the Council and prohibits the Council from conducting its agenda in secret.

The concept embodied in these mandates includes the right of the public to be present at proceedings of the Council which are held for the purpose of receiving evidence and testimony in specific cases, such as tariff hearings, and to be present during the deliberations of the Council that result in, or contribute to, a decision. The Council is not providing open access to the public relative to “the matters included in the agenda” if the members of the Council deliberate, discuss or decide agenda business in private. It is not sufficient for the Council merely to vote on an agenda matter at public session. The discussions and deliberations that result in the decision must also occur in public session.

The right of the public to attend Council sessions also means that the sessions must be conducted at locations large enough to accommodate all persons who can reasonably be expected to attend and that the sessions must be conducted in a manner that permits the attending public to hear what transpires. This may require that the sessions be held in a large public meeting room equipped with an electronic sound system.

### **3.3 Comment**

The third fundamental aspect of public participation in the regulatory process involves the right of the public to provide comment on the matters pending before the Agency. The rights of the public to notice and attendance are the necessary preconditions to the right to comment.

Comment can be in one of two forms: either written or oral. Both should be equally encouraged and assisted by the Agency. All notices by publication should contain the address of the Agency and a provision in bold type that states: “All persons interested in this matter are encouraged to submit written comment to the Agency concerning any aspect of the pending matter. Before rendering a decision in this matter, the Council will review and take into account all comments submitted by the public.”

In addition, all notices by publication that inform the public about the date, time and location of hearings and meetings of the Council should contain a statement that at such hearing or meeting

an opportunity will be provided for any member of the public to submit oral comment relative to the case for the consideration of the Council. Then, at the hearing or Council meeting the presiding officer should specifically inquire if any member of the public is present who desires to present a statement or submit any information for the consideration of the Council.

The presiding officer should ask the person to state their name and address before proceeding with their statement. The person's name and address should be recorded by the recording officer as well as the substance of their statement. This is important because the statement may disclose information that is important to the case or disclose other information that the Agency should pursue, such as a license condition violation or a service quality problem.

Finally, the Agency needs to be cognizant of the fact that not all consumers are able to attend hearings and Council meetings in Chisinau and during normal business hours. In order for the rights of the public to attend and comment to be truly meaningful, the Agency must make itself available at the convenience of the public. This means the Agency should schedule meetings at various locations around the Country, including at least one session in the evening, and publish notice of these sessions in local newspapers.

When regional sessions are planned, local public officials should be contacted in advance and their advice requested concerning how to maximize notice of the session and what should be done to insure optimal public attendance, perhaps including a joint meeting of the Agency and the local administrative/legislative authority. These sessions are for the primary purpose of permitting a broad range of consumers to attend and submit comment on the pending matter.

This is especially true for cases that have only regional effects, such as a tariff adjustment for the Northwest Disco. But any case that has national retail consequences should involve at least two regional sessions for the purpose of aiding public attendance and comment. These regional sessions would also present an opportunity for the Agency to explain its mission as well as its duties and responsibilities to a broad spectrum of the public who would not otherwise have an opportunity to learn about the Agency and the services it provides to consumers.